

APPEAL NO. 032385
FILED OCTOBER 17, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on July 29, 2003. The hearing officer decided that appellant (claimant) did not sustain a compensable injury on _____; that claimant gave timely notice to her employer of the alleged injury; and that, since claimant did not sustain a compensable injury, she did not have disability. Claimant appealed the adverse determinations regarding compensability and disability on sufficiency grounds. Respondent (carrier) responded, arguing that the evidence supports the complained-of determinations. The hearing officer's determination that carrier is not relieved from liability under Section 409.002 because of the claimant's failure to timely notify her employer pursuant to Section 409.001 was not appealed and is now final. Section 410.169

DECISION

We reverse and remand.

Claimant attached documents to her appeal that were not admitted at the hearing. In determining whether new evidence submitted with an appeal requires remand for further consideration, the Appeals Panel considers whether the evidence came to the knowledge of the party after the hearing, whether it is cumulative of other evidence of record, whether it was not offered at the hearing due to a lack of diligence, and whether it is so material that it would probably result in a different decision. See Texas Workers' Compensation Commission Appeal No. 93536, decided August 12, 1993. We do not find that to be the case with the documents attached to this appeal, as the information in the new documents could have been obtained and presented with the exercise of due diligence by the claimant. Under these circumstances, we cannot conclude that the attached documents meet the criteria for requiring a remand and we decline to consider them for the first time on appeal.

We reverse the hearing officer's determination that claimant did not sustain a compensable injury and remand for reconsideration because of an apparent error in one of the hearing officer's statements. In the decision, the hearing officer stated that claimant was credible and that she suffered pain in her shoulder while working. The hearing officer appeared to determine that there was no compensable injury because there was no diagnosis listed for a shoulder injury. The hearing officer said, "the medical evidence presented does not include a specific diagnosis of a right shoulder injury." However, the medical records from the (clinic) indicate that a bone scan showed increased uptake in the AC joint, that claimant had a positive impingement sign, and that the OS acromial is unstable. They also indicate that claimant has "bursitis" and state that claimant was offered physical therapy for "impingement syndrome." Diagnostic testing stated that there was no shoulder fracture or dislocation and stated that no soft tissue abnormality was seen; however, claimant was still treated for a

shoulder injury. A September 3, 2002, report from the clinic stated that claimant was four weeks out from "OS acromiale ORIF," indicating that there may have been a fracture. We must remand for the hearing officer to reconsider her determination. Because we are remanding the injury determination, we also remand the disability determination.

We reverse the hearing officer's decision and order and remand for reconsideration of the decision. Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Workers' Compensation Commission's Division of Hearings, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**ROBERT PARNELL
8144 WALNUT HILL LANE, SUITE 1600
DALLAS, TEXAS 75231-4813.**

Judy L. S. Barnes
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Edward Vilano
Appeals Judge